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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/058,323	04/09/1998	BEREND HOUWEN	10690/101683	7347

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BRYAN CAVE
245 PARK AVENUE
NEW YORK, NY 101670034

EXAMINER

GABEL, GAILENE

ART UNIT PAPER NUMBER

1641

DATE MAILED: 05/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/058,323

Applicant(s)

HOUWEN ET AL.

Examiner

Gailene R. Gabel

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 22 March 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: (see attached).
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.Claim(s) objected to: 10-12.Claim(s) rejected: 1-9 and 13.Claim(s) withdrawn from consideration: NONE.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Art Unit: 1641

Advisory Action

1. Applicant's response filed 3/22/04 is acknowledged. Currently, claims 1-13 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 5-9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al. (US 5,648,225) in view of Loken et al. (US 5,047,321) for reason of record.
3. Claims 4 and 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al. (US 5,648,225) in view of Loken et al. (US 5,047,321) as applied to claims 1-3 and 5-9, and in further view of Inami et al. (US 5,298,426) for reason of record.

Response to Arguments

4. Applicant's arguments filed 3/22/04 have been fully considered but they are not persuasive.

Art Unit: 1641

A) Applicant argues that neither Kim nor Loken teach or suggest step v) of claim 1 which recites "plotting the nucleotide fluorescent signal and the fluorescent labeled antibody signal in two coordinate axes to obtain a two dimensional distribution chart discriminating between erythroblasts and leucocytes in the hematologic sample based on the difference in the two-dimensional distribution chart and counting the erythroblasts" and points to Figure 3a.

In response, Kim et al. at Figure 3b provides a two dimensional distribution chart that includes nucleotide fluorescent signal from chicken erythrocyte nuclei (CEN) and fluorescent labeled antibody signal from leucocytes, i.e. neutrophils and eosinophils (N+E), lymphocytes (L), and monocytes (M). While Kim et al. is silent in teaching that the multipurpose reagent is used in simultaneously analyzing hematological samples to 1) discriminate erythroblasts by detecting nucleotide fluorescent signal and 2) determine leucocyte classes by detecting signal from labeled anti-leucocyte antibodies that bound to cell surface antigens in the leucocytes using multiparameter flow cytometric analysis, Kim explicitly provides suggestion to use the multipurpose reagent system in simultaneously "performing white cell differential analyses and quantitative analyses of nucleated red cells, i.e. erythroblasts ... on a flow cytometer" as in the method of Loken (see column 1, lines 11-17). Kim explicitly provides motivation to use the multipurpose reagent system in simultaneously "monitoring the concentration of ... leucocytes while identifying the presence of immature nucleated red cells, i.e. erythroblasts in the peripheral blood" as an important diagnostic tool for physicians (see column 1, lines 35-38). The mere capacity of the multipurpose reagent system to 1) lyse nRBCs to thus

Art Unit: 1641

react with a nuclear stain, and 2) concurrently fix white blood cells to maintain their integrity to prevent penetration by the nuclear stain but allow for binding with fluorescent labeled antibody specific for leucocyte surface antigens, provides in and of itself, a suggestion and motivation to simultaneously achieve quantitation and differentiation of both cell lines. Absent the disclosure of item #2) aforementioned dismisses the requisite use to differentially identify leucocytes and absent the disclosure of item #1) aforementioned dismisses the requisite use to identify erythroblasts, in this one single multipurpose reagent system.


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gailene R. Gabel whose telephone number is (703) 305-0807. The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30 AM to 2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le can be reached on (703) 305-3399. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-0169.

Gailene R. Gabel
Patent Examiner
Art Unit 1641




CHRISTOPHER L. CHIN
PRIMARY EXAMINER
GROUP 1800/641

Application/Control Number: 09/058,323

Page 5

Art Unit: 1641

May 18, 2004